

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ARGELIA SOLITO,

Plaintiff,

v.

SAM'S EAST, INC., JOHN DOE 1-2,
ABC CORP., and XYZ CORP.,

Defendants.

CIVIL ACTION
FILE NO. _____

On Removal from the State Court
of DeKalb County, Georgia
23A02118

NOTICE OF REMOVAL BY DEFENDANT SAM'S EAST, INC.

COMES NOW, SAM'S EAST, INC. d/b/a SAM'S CLUB ("Sam's" or "Defendant" herein), and, within the time prescribed by law, files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, respectfully showing the Court as follows:

1.

On May 12, 2023, Plaintiff filed a civil action in the State Court of DeKalb County, Georgia, which is styled as follows: *Argelia Solito v. Sam's East, Inc., John Doe 1-2, ABC Corp., and XYZ Corp*; Civil Action File No. 23A02118. (True and correct copies of all process and pleadings received by counsel for Defendant in such action are attached hereto and incorporated herein as Exhibit "A").

2.

This action is currently pending in the State Court of DeKalb County, Georgia, which is within the jurisdiction of the Northern District of Georgia, Atlanta Division. 28 U.S.C. § 1446(a).

3.

Plaintiff's Complaint alleges that she was injured in a slip and fall accident at Sam's Club Store Number 6409 located at 1940 Mountain Industrial Blvd, Tucker, DeKalb County, Georgia 30084. (*See Complaint, generally*).

4.

Defendant's Answer to Plaintiff's Complaint was filed on June 23, 2023. (A true and correct copy of Defendant's Answer filed in the State Court of DeKalb County is attached hereto as Exhibit "B").

5.

Defendant removes this case based on the fact that this Court has diversity jurisdiction over this action under 28 U.S.C. § 1332, which requires (a) complete diversity of citizenship between the parties and (b) an amount in controversy exceeding \$75,000.

6.

Defendant Sam's Club is now, and was at the commencement of this suit, a corporation formed under the laws of the State of Arkansas and has its principal place of business in Arkansas. Accordingly, Sam's Club is a citizen of Arkansas. 28 U.S.C § 1332(c)(1).

7.

Plaintiff Argelia Solito is a citizen of Georgia. (*See* Complaint, ¶ 1).

8.

In the lawsuit, Plaintiff also named "John Doe 1-2," "ABC Corp." and "XYZ Corp." as defendants. 28 USC § 1441(b)(1) provides that "[i]n determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded." Accordingly, defendants "John Doe 1-2," "ABC Corp." and "XYZ Corp." should be ignored for purposes of establishing diversity jurisdiction.

9.

Complete diversity exists between Plaintiff and Defendant, as required by 28 U.S.C. § 1332(a)(1).

10.

In her Complaint, Plaintiff seeks to recover against Defendant “for all of Plaintiff’s injuries and pain and suffering, mental, physical, and emotional, past, present, and future,” “past and future medical expenses and loss of income in the past and future,” and attorney’s fees. (*See Complaint, generally*).

11.

Plaintiff’s Complaint does not state the amount of damages sought but seeks damages in an amount to be proven at trial. (*See Complaint, generally*).

12.

28 U.S.C. § 1446(b)(3) provides “if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order *or other paper* from which it may first be ascertained that the case is one which is or has become removable.” (Emphasis added). Courts have included within the term “other paper” responses to requests for admissions, settlement offers, interrogatory responses, deposition testimony, demand letters, and emails estimating damages. *See Lowery v. Alabama Power Co.*, 483 F.3d 1184, 1213 n.62 (11th Cir. 2007) (cited sources omitted). In determining the amount in controversy, “[t]he definition of ‘other paper’ is broad and may include any formal

or informal communication received by a defendant.” *Lambertson v. Go Fit, LLC*, 918 F. Supp. 2d 1283, 1285 (S.D. Fla. 2013) (citation omitted).

13.

On July 25, 2023, Plaintiff’s counsel served responses to Defendant’s First Interrogatories, Request for Production of Documents, and Request for Admissions. (True and correct copies of Plaintiff’s relevant discovery responses¹ are attached hereto and incorporated herein as Exhibit “C”). In response to Interrogatory No. 32, Plaintiff itemized her medical damages as follows:

- Peachtree Spine and Sport Physicians - \$36,653.80;
- Ortho Sport & Spine Physicians – estimated \$40,106.74;
- Northside Hospital - \$3,889.00;
- Northside Radiology – TBD; and,
- Northside Emergency Associates, PC - \$653.00.

Thus, Plaintiff is claiming in excess of \$81,302.54 in past medical expenses.

¹ In an effort to preserve Plaintiff’s privacy, Defendant is only attaching Plaintiff’s discovery responses related to her claimed damages. However, if this Court requires Plaintiff’s full discovery responses, Defendant will provide them promptly.

14.

Additionally, in response to Request for Admissions No. 2, Plaintiff admitted that she “will seek to recover general and special damages from Defendant Sam’s East, Inc. a sum in excess of \$75,000.00.”

15.

Consequently, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 (a), 1441, and 1446 because (a) complete diversity exists between the parties to this action and (b) the amount in controversy is in excess of \$75,000.00.

16.

This removal action is timely because it is filed within 30 days of the receipt of Plaintiff’s discovery responses, i.e., “other paper from which it may first be ascertained that the case is one which is or has become removable.”

17.

In accordance with 28 U.S.C. § 1446, by service of a copy of this Notice of Removal, as evidenced by the Certificate of Service attached hereto, Defendant hereby gives notice of such removal to Plaintiff. (A true and correct copy of Defendant’s Notice of Removal that will be filed in the State Court of DeKalb County, Georgia is attached hereto as Exhibit “D.”)

WHEREFORE, Defendant prays that this lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division, that this Court take cognizance and jurisdiction over this claim from the State Court of DeKalb County, Georgia, and that this action proceeds as removed and under this Court's jurisdiction pursuant to 28 U.S.C. § 1332.

The undersigned have read this Notice of Removal and, to the best of their knowledge, information, and belief, after reasonable inquiry, have determined it is well-grounded in fact, is warranted by existing law, and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Respectfully submitted, this 2nd day of August, 2023.

DREW ECKL & FARNHAM, LLP

/s/Michael L. Miller

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**CERTIFICATE OF SERVICE AND COMPLIANCE
WITH LOCAL RULE 5.1(B)**

I HEREBY CERTIFY that I have this day filed the **NOTICE OF REMOVAL** with the Clerk of Court, using the CM/ECF system and served a copy of the foregoing upon Plaintiff via U.S. Mail, adequate postage prepaid, addressed as follows:

Hung Q. Nguyen, Esq.
HQ Alex Nguyen Law Firm LLC
5495 Jimmy Carter Blvd., Suite B-17
Norcross, GA 30093
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I further certify that the foregoing has been prepared with Times New Roman, 14-point font, in compliance with L.R. 5.1(b).

Respectfully submitted, this 2nd day of August, 2023.

DREW ECKL & FARNHAM, LLP

/s/Michael L. Miller _____

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